App F IX 4

Previous References 194 (Municipal) File No 42-43

Serial Nos 113, 11

Later References

GENERAL AND REVENUE SECRETARIAT

Serial Nos two

Part B for Dpm² 44

SUBJECT

Re the election of Mr HH Gunaswamy Jowan as Vice President of the Hoskote town Municipal Council, Bangalore Dist

GL 114 L 10569 fmc 42-43-114 & 12/4/44

To

The compiler, Mysore Gazette
The D.C, Bangalore U/R

Issues notification to the Gazette in respect of the above

MSB 8/7

6045 / 6256 / L

Election of V P to the Hoskote Town Mal cl

1) Letter no M6-3817-196/63 dt 31-3-64 from many proposals in regard to the election of Sri H M Gurushwamy Gouda as the Vice President of the Hoskote Town Mal cl

2) The D.C's letter is subtd for perusal ~~He~~ As the case has been decided in favour of Sri H M Gurushwamy Gouda without further action is called for, as noted at paras 2,3,4 supra

A draft Notification is submtd for approval

3) The D.C's report for 4/4/44 perusal in the cases reported, the D.C's prop may be accepted

Lawsey
5/Apr

4) May be approved

Lawsey
6-4-44

5) Sri

6) Done

B
1/6. issued No L105-69 dt 7-4-44

OFFICE OF THE MINISTER FOR L S G & P H
Date 6 4 44
No 6930

v)

6045
2

7) Petition dated 24 3 44 from one H Horsfall of Swinton and others, all members, Horsforth making certain allegations in regard to the election of Urban Members to the Local Board and praying for a hearing in the matter

8) 1) The Inspector's report on the election of U D to the Horsforth Town Local Board seems to have not yet been received in the Secretariat as yet. If approved, this will be forwarded to the D.C. Bungalow for a report on the matter

A/ subject

9) 2) A - My predecessor

Land Tax Section 30/3/44

10) 3) May be done

Mr Bell 30 3 44

11) 4) Hdg 2 4 44

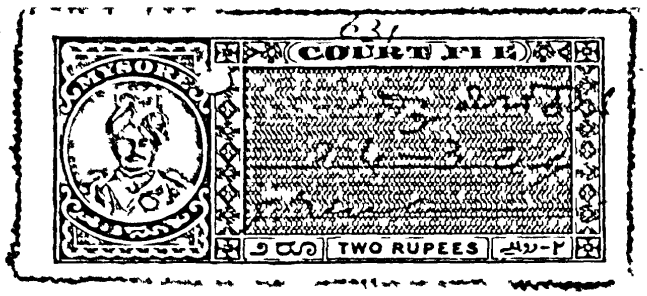
3 4 44

12) Memo as put up in the petition accordingly

13) This report has been rcd in a 4/4/44 today. Please put it up for 4/4/44

SSP

OFFICE OF THE MINISTER FOR L S G & P H
Date 31 MAR 1944
No 6045



Mr 6045 L (3)
889
SECY LAW DEPT
GOVT OF MYSORE
GEN & REV SECRETARIAT
6045
2 MAR 1944
BRANCH

BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA

of Mysore, Bangalore

Election Petition No 43-44

Petitioner - H Guruswamy Gowda
Hoskote

-vs-

Respondent - Venkata Subbiah and others
Hoskote

The petitioner begs to submit as follows -

1 In respect of the election of Vice President of the Town Municipal Council Hoskote, Bangalore District five candidates were nominated for the said office and out of them 3 candidates withdrew their candidature and as a result there were only two candidates, petitioner and the respondent

2 At the meeting held for the election on 3-2-1944, there were 21 councillors including the Amildar President, voting slips were distributed and polling took place, while counting the votes, it was found by the Amildar one to be invalid and the petitioner got 10 votes and the respondent 10 votes Then these 20 valid voting papers were mixed up and a boy was called and he took up one paper which was in favour of the petitioner and hence he was held to be elected

3 Upon this the respondent filed an application to the Deputy Commissioner under Rule 12 of the Rules framed for the election of Vice Presidents for the Town Municipal Councils

This petition was forwarded to the Subdivisional Officer Bangalore for enquiry and on 6-3-44 the

the case was heard and the Learned Sub Divisional Officer said that he would submit his report

4 It is more than one and a half month s since the election was held and orders have not been passed yet The petitioner submits that the objection filed by the respondent before the Deputy Commissioner is not valid one, and it is filed only to delay the petitioner taking charge

5 When the voting papers were given to the voters, there were only two names, and the voter knew fully well that he has to place the mark against the name of the candidate for whom he wishes to vote, as per rule 7 regulating the election of Vice Presidents of Town Municipal Councils

6 The name of the respondent is at the bottom column of the voting paper and that of the petitioner is at the top, and the mark that the voter has made is at the top column and not at the bottom, and, as such, the intention of the voter could not be that he had to vote for the respondent On the other hand, it is to be assured that the intention of the voter was to vote for the petitioner

7 The voter instead of putting the cross mark against the name of the petitioner has drawn a straight line to the left of the place intended for the Cross and the line extends over the name also.

8 A clean straight line in place of cross in the column for marking against one s name is a valid voting as observed by Jagath Narain in his book 'Election and Election Petitions'

9 It is nowhere stated that, if the voter puts another mark instead of a cross mark that the vote is to be declared invalid (vide Punjab orth case 2 I L page 134)

10 Ballot paper, which clearly shows an attempt to vote, should not be rejected only because it has been marked badly and the returning officer should reject a ballot paper only if he comes to the conclusion that the mark by itself would lead to the identification of the elector Cirencester case 4 O L page 198

In the present case, there is nothing to indicate the elector and hence the Ballot paper should not have been rejected

11 Mark on back, instead of on the face, has been held to be good in Thornbury case 16 B L 746

12 Where the mark has been extended over the name of the candidate, as in the case, it has been held to be valid in Cirencester case 4 O L and 197

13 The above few cases indicate that the paper that has been declared invalid, is to be counted in favour of the petitioner and it cannot be in favour of the respondent

14 The rule is and the instructions in the voting slips are that a cross mark is to be made against the name of the person whom they want to elect as vice president and blank column is to be left out as against the name or names of other candidates or candidates Now there is blank space as against the name of the respondent Venkat Surbiah and as such he cannot be said to have secured the vote in any event any voting paper ~~shown~~ thrown blank into the voting

box will automatically become invalid beyond any doubt xxxx the voting paper in question arises for consideration only because, the voter has put some mark at the top column meant for the petitioner If there was no such marking in the top column, the voting paper would be blank and be invalid in toto

15 The respondent cannot blo hot and cold i the same breat' 'e cannot take the marking in the first column to make the voting paper valid and then at the same time say that by that marking the petition cannot get his vote because his place is left xxtx untouched and left blank This ould be against all principles of Justice and equity

16 Under the above circumstance, the vote is to be counted in favour of the petitioner but inspite of the rulings in the above decided cases if the overnment feels doubtful, it has to proceed under rule 8 and declare the vote invalid

In any view of the matter the petitioner is entitled to be declared as duly elected as Vice President and so he humbly prays that his prayer may be granted

Further the petitioner prays that he may kindly be heard before the final orders are passed in the case

Bangalore,
24-3-4

[redacted]
Petitioner

Memo No 2

Forwarded with compliments

to the Deputy commissioner, Bangalore District,
for favour of an early reply in the matter
By order.

Secretary to Govt. Law Deptt.

42—43—113

C-3317-196/43-44

Office of the Deputy Commissioner,
Bangalore District, Bangalore,
Dated the 31st M a r c h 1944.

From

Mohomed Ismail Sheriff, Esq., B.A.,
Deputy Commissioner,
Bangalore District,
B a n g a l o r e

GEN & REV SECRETARIAT
6258
4 APR 1944
L S & BRANCH

To

C. Narayanaswamy Naidu, Esq., B A., B.L.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

S i r,

Subject Election of Vice-President at Hoskote Town Municipality.

I have the honour to state that the newly constituted Town Municipal Council of Hoskote having resolved to have a Vice-President, an election was held on 3-2-1944 as per rules Out of

(1)	Messers	H.M Abdul Karim Sahbb.
(2)	"	H. LalSingh
(3)	"	G Abdul Sattar Saheb
(4)	"	H.M Guruswamy Gowda
(5)	"	Venkatasubbiah

the marginally noted five candidates who stood for election, the first three withdrew their candidature. In the election held at the special meeting dated 3-2-1944, Messers Guruswamy Gowda and Venktasubbiah each got 10 votes and one vote was declared invalid. Lots were therefore drawn by the Returning Officer in which Mr. Guruswamy Gowda was successful He has therefore been declared duly as elected Vice President

An objection petition was received in this office in time by Mr. Venkatasubbiah and two other Municipal Councillors contesting the validity of the above declaration under Rule 12 of the Election Rules It was urged in the said petition that the ballot paper declared as " invalid " was not so but was a valid vote in favour of Mr Venkatasubbiah The petition was forwarded to the Sub Division Officer, Dodballapur for detailed enquiry and a report under Rule 12 of the Election Rules. The Sub Division Officer after hearing the counsels for both the parties and perusal of the particular ballot paper declared invalid has submitted a detailed report with the following findings:-

His findings are that as no cross mark has been placed on the said voting paper agsinst the name of Mr Venkatasubbiah as

as required by the Rules, the adjudication of the Returning Officer is correct. The contention of the petitioners is that though X mark has not been placed against Mr. Venkatasubbiah's name, still the intention of the voter in striking off the name of Mr. Guruswamy Gowda counts as giving his vote to the remaining candidate, Mr. Venkatasubbiah Stress is laid on the intention and in support of this the counsel for the petitioners quotes the marginally noted decisions:-

(1) The law of Municipal Corporation in British India 1924. Page 88 Explanation of J Hawkins

(2) Madras Law Journal Volume XLVIII Page 268 in a case between T.C. Xavier and E.C Joseph.

(3) Mysore Law Journal Vol. XI Page 74. His Appeal case No 29/31-32

The counsel for the counter Petition (Mr H M.Guruswamy Gowda) argues that a ~~mark~~ mark which has been ~~made~~ extended over the name of candidate has been held to be valid in circu~~m~~ster case 4 O.M. and H 197 He further contends that if the said voting paper is declared valid, the vote should be necessarily be counted in Mr Guruswamy Gowda's paper.

The copy of the particular voting paper declared invalid is enclosed The names of the three withdrawn candidates had been scored out before issue to the members. The elections are governed by a definite set of Rules framed by Government As per Rule 7 of the election Rules sanctioned in G O. No.L8265-M1245-34-2d 22/29-5-1935 it is essential to place a cross mark against the name of the candidate voted for This is also contained in the instructions written on the voting paper The marking of cross mark is mandatory and not discretionary. In these circumstances, I am of opinion that the contention of the petitioners does not seem to be tenable The particular~~s~~ ballot paper declared invalid may as well be a vote for Mr. Guruswamy Gowda as the party has to mark against the name of person for whom he wishes to vote and leave the rest This striking may be a line or cross. I, therefore, recommend that the election of Mr Guruswamy Gowda as Vice President may be kindly approved by Government and notified in the Gazette accordingly. The connected records accompany

I have the honour to be,
Sir,
Your most obedient servant,

Deputy Commissioner,
Bangalore District,

GSS

(9)

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

No L 10569/ml42-43-114 General and Revenue Secretariat,

Dated, Bangalore 12/4/1944

NOTIFICATION

Under Section 23 (4) of the Mysore Town Municipalities Act,1933, Mr.A.M.Guruswamy Gowda is elected as the Vice President of the Hoskote Town Municipal Council, Bangalore District.

By Order,

Secretary to Government,
Law Department.

The Compiler, Mysore Gazette, for publication in Part III-3 of Gazette and supply of ten copies thereof to the Secretariat and to the Deputy Commissioner of the Bangalore District.

K.M.R.12.

ML 42-43-114 (10.

12 October

2 10566

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated Bangalore 12/4/44

NOTIFICATION

Under Section 23 (4) of the Mysore Town Municipalities Act, 1933 ~~Section 10 (4) of the Mysore Minor Municipalities Act 1933~~

Mr H M Gurusswamy Gowda is elected as the Vice President of the Hoskote Town Municipal Council ~~Minor Municipal Council~~ Bangalore District,

By Order,

Secretary to Government
Law Department

To—The Compiler Mysore Gazette for publication in Part III-3 of Gazette and supply of ten copies thereof to the Secretariat and to the Deputy Commissioner of the District ~~Concerned~~

MEMO NO 2 10569 & 12/4/44

Copy of the above is forwarded with compliments to the Deputy Commissioner, Bangalore District for information with reference to his letter No 176-3817-196/43 dated 31-3-1944

The records accompany

By Order,

For Secretary to Government,
Law Department